

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL J. SANDS,

Plaintiff,

No. 16-12860

v.

District Judge Mark A. Goldsmith
Magistrate Judge R. Steven Whalen

MEGAN J. BRENNAN, POSTMASTER
GENERAL OF THE UNITED STATES,

Defendant.

REPORT AND RECOMMENDATION

On August 3, 2016, Plaintiff Michael J. Sands filed a *pro se* complaint under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, alleging employment discrimination by his employer, the United States Postal Service. Before the Court at this time is his Motion for a Cease and Desist Order Against the United States Postal Service [Doc. #27].

The present motion is based on what Mr. Sands apparently claims is an invalid debt claimed by the Postal Service. He states in his motion, at Pg. ID 370:

“The United States Postal Service is attempting to garnish my wages and has already wrongfully confiscated part of my 2016 Federal Income Tax return, through their collection agency, known as Performant, for a debt that I do not owe.”

As Defendant summarizes the background of the debt:

“In 2011, plaintiff took advance vacation leave. when he was declared unfit for duty and suspended from work, he was not able to work the amount of time necessary to earn the leave, leaving a debt to the Postal Service.” *Defendant’s Response* [Doc. #31], at Pg. ID 394, citing *Plaintiff’s Motion*, Pg. ID 371.

Attached to Plaintiff’s motion is a collection letter to Plaintiff sent by Performant Recovery, Inc., the collection agency. The letter indicates that although the “original creditor” was the U.S. Postal Service, the client on whose behalf Performant is acting is the U.S. Department of Treasury (Pg. ID 374). In addition, also attached to Plaintiff’s motion is a letter from the Department of Treasury Bureau of the Fiscal Service (Pg. ID 377), dated April 19, 2017, indicating that part of his income tax refund was applied to debts he owed to other federal entities, including the Debt Management Servicing Center and Veterans Affairs medical centers.

In short, it is the Treasury Department, not the Postal Service, that is attempting to collect debts that Plaintiff is claimed to owe. Neither the Treasury Department, the Debt Management Servicing Center, the Veterans Affairs medical centers, nor Performant are parties to this lawsuit, and the Court has no jurisdiction over them. That being the case, the Court has no authority to impose a “cease and desist order” on those entities. And ordering the Defendant Postal Service to “cease and desist” would be futile, in that the Postal Service is not collecting the debt.

Finally, to the extent that Plaintiff challenges the debt to the Postal Service as part of his Title VII employment discrimination claim, he has not exhausted his administrative

remedies. Attached to Defendant's Response as Exhibit A is the Declaration of Deborah W. Carlson, an attorney for the Postal Service who represented the Service in an EEO complaint that Plaintiff filed, Agency Case No. 4J-481-0108-16. In that informal complaint, Plaintiff alleged that he was discriminated against when he received a demand letter from the Department of Treasury regarding an outstanding debt he owed to the Postal Service. When the complaint was not resolved informally, Plaintiff was sent a Notice of Right to File a Formal EEO Complaint. *See* Exhibit 2 to the Carlson Declaration. However, Ms. Carlson states that Plaintiff "never filed a formal EEO complaint in Case No. 4J-481-0108-16. As such, his informal complaint was closed on or about October 3, 2016." Carlson Declaration, ¶ 7. Because Plaintiff has not exhausted his administrative remedies, any claim regarding the debt is not properly before the Court.

Accordingly, Plaintiff's Motion for a Cease and Desist Order [Doc. #27] is DENIED.

IT IS SO ORDERED.

s/ R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: November 29, 2017

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent to parties of record on November 29, 2017, electronically and/or by U.S. mail.

s/Carolyn M. Ciesla
Case Manager to the
Honorable R. Steven Whalen